# CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	☐ Fore	e [	Discourt	U.S.
Simon Wang		Squad #10	201604078	☑ Abu	se [	O.L.	☐ Injury
Incident Date(s)		Location of Incident:	•	Precin	nct:	18 Mo. SOL	EO SOL
Thursday, 05/05/2016 5:30 AM		Kings Highway and Sn	yder Avenue	67		11/5/2017	11/5/2017
Date/Time CV Reported		CV Reported At:	How CV Reported	: Date	/Time R	Received at CC	RB
Fri, 05/06/2016 5:50 AM		IAB	Phone	Thu,	05/12/2	2016 10:54 AM	А
Complainant/Victim	Type	Home Addre	ess				
Subject Officer(s)	Shield	TaxID	Command				
1. DT1 James Mccafferty	03008	883339	DB BSHM				
2. DT3 Michelle Morra	3241	946036	070 DET				
Officer(s)	Allegati	on			Invest	tigator Reco	mmendation
A.DT1 James Mccafferty	Abuse: Detective James Mccafferty stopped the vehicle in which \$87(2)(b) was an occupant.						
B.DT1 James Mccafferty	Abuse: Detective James Mccafferty threatened with the use of force.						
C.DT1 James Mccafferty	Abuse: 1 § 87(2)(b)	Detective James Mccaffe	rty threatened to arr	est			
D.DT1 James Mccafferty	Abuse: 1	Detective James Mccaffe	rty drew his gun.				
E.DT1 James Mccafferty	Abuse: 1 § 87(2)(b)	Detective James Mccaffe s property.	rty threatened to dar	mage			
F.DT1 James Mccafferty	Abuse: I name to	Detective James Mccaffe § 87(2)(b)	rty refused to provid	de his			
§ 87(2)(g), § 87(4-b)							

## **Case Summary**

On May 6, 2016, § 87(2)(b) filed the following complaint with IAB. On May 12, 2016, this
complaint was received at the CCRB via referral number 16-16445. On May 5, 2016, at
approximately 5:30 a.m., \$87(2)(b) was driving to work when he stopped at a red light at the
intersection of King's Highway and Snyder Avenue in Brooklyn. Two officers identified by the
investigation as Detective James Mccafferty of Brooklyn South Homicide and Detective Michelle
Morra of the 70 <sup>th</sup> Precinct Detective Squad approached \$87(2)(b) s vehicle on foot
(Allegation A). Det. Mccafferty allegedly threatened to drag (\$87(2)(b)) out of the car and to
the stationhouse (Allegations B and C). § 87(2)(b) reached towards his glove compartment to
retrieve his registration and insurance, and Det. Mccafferty allegedly reacted by pulling out his
gun (Allegation D). §87(2)(b) was filming video using his cell phone, with the camera's flash
light activated. Det. Mccafferty and Det. Morra both repeatedly asked \$87(2)(b) not to shine
the light in their eyes because they could not see. After two requests, Det. Mccafferty said to
"If you put that in my face one more time, I'm going to break it. Do you
understand?"(Allegation E) Later in their interaction, §87(2)(b) asked Det. Mccafferty,
"Officer what's your name please?" Det. Mccafferty allegedly did not provide his name
(Allegation F). Despite multiple requests by both Det. Mccafferty and Det. Morra, §87(2)(b)
never provided identification, registration or insurance. §87(2)(b) was released without any
summonses or arrest. § 87(2)(g), § 87(4-b)
recorded cell phone video of the incident, beginning at an unknown point in the
incident and continuing until after the officers departed. §87(2)(6) played the video during his
CCRB interview and allowed it to be recorded by the CCRB from his phone.

This case is being submitted more than 90 days after its receipt at the CCRB due to the difficulty in identifying the subject officers. There were no 911 calls, radio transmissions, or police documents generated for this incident. The officers could only be identified after the undersigned viewed photographs of hundreds of officers in the computer database and comparing them to the faces of the officers in the video. There were further delays in scheduling Det. Mccafferty due to his vacation. Det. Morra could not be identified by viewing photographs alone, and was identified by Det. Mccafferty during his CCRB interview on August 10, 2016.

#### Mediation, Civil and Criminal Histories

- \$87(2)(b) declined to mediate this complaint \$87(2)(b)
- As of August 11, 2016, an enquiry to the Office of the New York City Comptroller indicated that no notice of claim was filed for this incident (**Board Review 1**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

#### **Civilian and Officer CCRB Histories**

• This is the first and only CCRB complaint filed by \$87(2)(b) (Board Review 3).

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 Det. Mccafferty has had four other complaints involving four allegations made against him in his 32 year tenure at the NYPD. None of the allegations have been substantiated, **■** (Board Review 4). • Det. Morra has had two other complaints, involving four allegations made against her in her 8 year tenure at the NYPD. None of the allegations have been substantiated, \$57(2)(9) (Board Review 5). **Potential Issues** § 87(2)(g) § 87(2)(b) did not know the names of either officer and there was no arrest or summons generated. There were also no radio transmissions or 911 calls made during this incident. The only information by which to identify the officers came from the grainy cell phone footage which showed the faces of the officers. § 87(2)(9) Only after Det. Mccafferty was interviewed was Det. Morra identified. This incident occurred within the confines of the 67th Precinct, but the subject officers were eventually identified as detectives assigned to Brooklyn South Homicide squad and the 70<sup>th</sup> Precinct detectives squad. **Findings and Recommendations** Allegations not Pleaded Abuse of Authority -\\$ 87(2)(9) **Explanation of Subject Officer Identification** Det. Mccafferty and Det. Morra both admitted to interacting with \$87(2)(b) s cell phone video show them as the subject officers. Allegation A – Abuse of Authority: Detective James Mccafferty stopped the vehicle in which was an occupant. stated that he was stopped at a red light on his way to work when he was approached by Det. Mccafferty and Det. Morra on foot. \$87(2)(b) had not observed from where the detectives came and did not see their vehicle. In his CCRB interview (Board Review stated that "to the best of my recollection," he did not knowingly commit any traffic infractions while driving. In their CCRB interviews, both Det. Mccafferty (Board Review

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homicide investigation when they observed \$87(2)(b) so vehicle making rapid lane changes, passing vehicles by crossing double yellow lines and driving at high speeds. Both officers stated that by driving in such a manner, \$87(2)(6) committed numerous traffic infractions including speeding and driving on the wrong side of the road. Det. Mccafferty was driving the unmarked patrol car and stated that his intention in pulling over was not only to reprimand him for reckless driving, but also to investigate his erratic driving because such driving led him to believe that § 37(2)(b) may have been fleeing a crime scene. The police vehicle did not have any emergency lights, so Det. Mccafferty followed until he stopped at a traffic light and approached his vehicle on foot. Once he approached \$87(2)(b) s vehicle, Det. Mccafferty saw that \$87(2)(b) was in a work uniform and concluded that he was likely in a rush on his way to work. After \$87(2)(6) uncooperative with providing identification and because Det. Mccafferty and Det. Morra were on their way to an important appointment for a homicide investigation, they decided to use their discretion and released § 87(2)(b) without any summonses. 201604078 20160523 1502 DM.mp4 In the video recorded by § 87(2)(b) § 87(2)(b) could be heard asking Det. Mccafferty for the reason he was stopped. Det. Mccafferty informed §87(2)(b) that he was stopped for "driving on the wrong side of the road." \$87(2)(b) responded by asking, "Do you have any proof?" However, in the video, \$87(2)(b) never denied that he committed any traffic infractions. Throughout the video of the interaction, \$87(2)(b) refused to provide any identification and stated that the officers had no authority to ask for identification, issue any summonses or arrest him. Allegation B – Abuse of Authority: Detective James Mccafferty threatened §87(2)(6) with the use of force. Allegation C – Abuse of Authority: Detective James Mccafferty threatened to arrest [887(2)(5)] **Board Review 6**) alleged that when Det. Mccafferty approached, he immediately said, "License and registration, I'll pull you out, drag you on the asphalt to the stationhouse. Do you understand? Do you understand? License and registration." Det. Mccafferty (**Board Review 7**) stated that he approached \$87(2)(5) and identified himself by name and stated that he was an NYPD detective. He then asked 887(2)(b) why he was driving in such a manner and asked for his license and registration, which §87(2)(b) refused to provide. Det. Mccafferty stated that after repeated refusals by \$87(2)(b) to provide his license Page 4

7) and Det. Morra (Board Review 8) stated that they were driving to an appointment as part of a

or registration, he ordered \$87(2)(b) out of the car, but \$87(2)(b) refused. Det. Mccafferty did not recall his words, but he speculated that he may have told \$87(2)(b) that he would be removed from the car by force, as he believed he had authority to do so. Det. Mccafferty did not specifically recall threatening to arrest \$87(2)(b) but stated that he had legal authority to do so after \$87(2)(b) repeatedly refused to provide identification. Det. Morra ( <b>Board Review 8</b> ) was initially on the other side of the vehicle at the beginning of the incident. Det. Morra did not recall hearing Det. Mccafferty make any threats to \$87(2)(b)
The video recorded by \$37(2)(b) (see above video file) began mid-sentence as Det.  Mccafferty stated, " getting locked up. Do you understand?" Detective Mccafferty then asked  for his license and registration. \$37(2)(b) responded by stating that he had a license but did not provide it. Detective Mccafferty then warned \$37(2)(b) that if he put the car into drive, "You're going to have a problem." Det. Mccafferty then instructed \$37(2)(b) to put the car into park, which \$37(2)(b) did. Throughout the remainder of the video of the interaction, both Det. Mccafferty and Det. Morra could be heard repeatedly asking \$37(2)(b) responses included telling the officers they had no authority to stop him, questioning the reason for the stop, and accusing Det. Mccafferty of threatening him. \$37(2)(b) reverse provided identification to the officers. For the remainder of the video, Det. Mccafferty did not utter any threats to arrest \$37(2)(b) refused to do.
§ 87(2)(g)
Allegation D – Abuse of Authority: Detective James Mccafferty drew his gun.  887(2)(9) alleged (Board  Review 6) that as he reached towards his glove box to retrieve his registration and insurance, Det.  Mccafferty pulled out his gun. \$87(2)(6) stated that he did not get a clear look at the gun and did not see how Det. Mccafferty held the gun. \$87(2)(6) stated that he could see from the
glimpse of the gun that it was black before Det. Mccafferty holstered it. stopped reaching towards his glove box and never provided his registration or insurance to the officers.  Det. Mccafferty's department issued firearm is a black 9mm handgun. Det. Mccafferty (Board Review 7) stated that stopped made a sudden rapid movement towards the passenger side of the which could him to for his sector. Det. Mccafferty stated that he placed his head
the vehicle which caused him to fear for his safety. Det. Mccafferty stated that he placed his hand on his holster and warned safe(2)(6) not to move. Det. Mccafferty denied that he drew his firearm from the holster. Det. Morra ( <b>Board Review 8</b> ) did not recall any specific movements by

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inside the vehicle and she did not see Det. Mccafferty either place his hand on his holster or remove his gun. According to the video recorded by \$87(2)(6) (see above video file), the camera was pointed at \$87(2)(b) s lap when \$87(2)(b) first accused Det. Mccafferty of drawing his gun. No part of Det. Mccafferty's body was visible at that time in the video. Det. Mccafferty repeatedly denied to \$87(2)(6) that he drew his gun, at one point stating to \$87(2)(6) "It's right here" while indicating to his hip. \$87(2)(b) told Det. Mccafferty that the video recorded him pulling his gun. However, at no point did the video show Det. Mccafferty drawing his firearm or holding his firearm. According to the decision in PD v. Gliner, OATH Index No. 955/00 (2000) (Board Review 9) an officer may draw his firearm and point it at another individual if they have a reasonable fear for their own safety or another person's safety. The determination as to when that exercise of discretion rises to the level of misconduct must be made by assessing the reasonableness of the officer's actions in the totality of the surrounding circumstances. Allegation E – Abuse of Authority: James Mccafferty threatened to damage (357(2)(5)) s property. This incident occurred at approximately 5:30 a.m., during the morning twilight hours. As seen in the video (see above video file), the sky was dark and the flashlight on \$87(2)(b) was active throughout the recording of the video. At approximately 55 seconds into \$ 87(2)(b) s recording, while the camera was trained on Det. Mccafferty's face, and the camera light could be seen illuminating his face, Det. Mccafferty stated, "I can't see! I can't see! Turn the light out of my face." The camera was then turned away towards the dashboard of [8] [3] [2] [5] car. As the incident continued, the camera was at times directed back towards Det. Mccafferty and Det. Marro. Four minutes and 11 seconds into the recording, the camera was again directed at Det. Mccafferty's face with the light on. Det. Mccafferty stated, "Please. Get that out of my...I can't see." \$87(2)(b) complied and Det. Mccafferty responded, "Thank you very much." Five minutes and three seconds into the recording, the camera was again directed at Det. Mccafferty's face with the light illuminated. Det. Mccafferty stated, "If you put that in my face one more time, I'm going to break it. Do you understand?" \$87(2)(b) responded by asking, "Are you threatening me officer?" Det. Mccafferty replied, "Yes." In the video, the light was also shined in Det. Morra's face at times, and Det. Morra did also tell \$87(2)(6) that she could not see and asked him to turn the light away. In his CCRB interview (**Board Review 7**), the video recorded by § 87(2)(b) was played for Det. Mccafferty who did not dispute that he made those comments to §87(2)(b) Det.

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Mccafferty stated that he made the threat after \$87(2)(b) continued to shine the light in his eyes despite repeated requests for him to cease. Det. Morra also stated that \$87(2)(b) s light, when shined in her eyes affected her ability to see and that she asked \$87(2)(b) to cease as well. Det. Morra did not recollect Det. Mccafferty's statements to \$87(2)(b)
Officers must give due respect to property but may damage property if doing so is reasonably necessary to carry out their duties. Onderdonk v. New York, 170 Misc.2d 155(1996, Court of Claims) ( <b>Board Review 10</b> )
§ 87(2)(g)
•
Allegation F – Abuse of Authority: Detective James Mccafferty refused to provide his name to \$87(2)(6)
In the video, recorded by \$87(2)(b) (see above video file), at approximately 5 minutes and 13 seconds into the video, after Det. Maccafferty and Det. Morra had both repeatedly requested \$27(2)(b) s license and registration and informed \$87(2)(b) that he had been observed driving recklessly, \$37(2)(b) and Det. Mccafferty became engaged in a verbal back-and-forth in which \$87(2)(b) repeatedly asked, "Officer are you detaining me?" and Det. Mccafferty replying with, "Are you driving now? Are you driving now?" During this as Det. Mccafferty was speaking, \$37(2)(b) talked over Det. Mccafferty and asked, "Officer, what's your name please?" Det. Mccafferty did not answer \$37(2)(b) and continued asking, "Are you driving now?" \$37(2)(b) did not repeat the question, and he and Det. Mccafferty continued to argue.
In his CCRB statement ( <b>Board Review 6</b> ), \$87(2)(6) stated that he did not believe that Det. Mccafferty heard his request for his name. After being shown the video, Det. Mccafferty ( <b>Board Review 7</b> ) stated that he did not hear \$87(2)(6) s request. Det. Mccafferty stated that upon first approaching \$87(2)(6) s vehicle, which was before the video recording began, he displayed his shield, stated his name and said that he was an NYPD detective. Det. Morra stated that she did not recall hearing \$87(2)(6) ask Det. Mccafferty for his name.
§ 87(2)(g)

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§ 87(2)(g), § 87(4-b)			
Squad: 10			
Squad. 10			
Investigator: _	a:	Simon Wang	08/19/16
	Signature	Print	Date
Squad Leader: _			
1	Title/Signature	Print	Date
<b>.</b>			
Reviewer: _	Title/Signature	Print	Data
	rine/Signature	PIIII	Date

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